

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

V.

CRIMINAL NO. 04-10048-NG

RICARDO ROSARIO  
(Carmelo Rodriguez)  
Defendant

**MOTION REQUESTING A PRE PLEA SENTENCE REPORT**

The defendant, Ricardo Rosario, hereafter Rosario, through counsel, respectfully moves that this Court request the Probation Office to complete a pre plea sentence report for the following reasons:

**Background:**

On June 29, 2004 Ricardo Rosario was scheduled to enter a plea of guilty to the charges in the pending indictment for possession and distribution of cocaine in three substantive counts with a quantity, estimated from the discovery provided, of approximately 32 grams and a conspiracy count that did not charge a quantity. At this Rule 11 hearing the government appeared with a superseding indictment in response to the Blakely decision issued June 24, 2004 that charged 500 grams to 2000 grams in the conspiracy count. Due to the uncertainty created by the Blakely opinion the Rule 11 hearing has been continued. The government has now filed a second superseding indictment charging Rosario separately in a Notice of Additional Factors with 500 to 2000 grams of cocaine. A plea of not guilty has been entered before the court, Cohen, M.J.

Issues Presented

1. With the filing of second superseding indictment and the significantly higher drug quantity alleged as against Rosario, based on the discovery, only on the boastful statements of Rosario, the need for a pre plea sentence report becomes apparent.

2. Within the past few weeks the government has offered discovery that has indicated that a cooperating defendant has been a long time paid government informant. His FBI handler has been involved in the investigation for over one-year. This new discovery may have a bearing on the actual investigation of this case, Rosario's involvement in the conspiracy charged and the amount of drugs for which he should be held responsible.

3. The computation of the drug amount and the criminal history category would be beneficial in Rosario's determination to enter a plea of guilty, and should he do so, for the Court's determination of an appropriate sentence.

4. A pre plea sentence report would not be unduly burdensome for the Probation Office, since most likely the officer assigned has authored two probation reports for two of the co-defendants and has been present in court for various hearings related to this case.

5. This request is not opposed by the government.

6. Rosario understands that the time involved in the preparation of this report is excludable.

WHEREFORE, Rosario requests that this Court enter an order directing the Probation Office to complete a pre plea sentence report.

Dated: November 4, 2004

RICARDO ROSARIO

By his attorney

/s/ Lois Lewis  
Lois Lewis  
BBO # 298580  
74 Fuller Terrace  
West Newton, MA 02465  
Tel: (617) 969-4854